

**BARBERING AND COSMETOLOGY EXAMINING BOARD MEETING
MINUTES
MADISON, WI
AUGUST 6, 2001**

PRESENT: Barbara Flaherty, Leon Lauer, Lorraine Norem, Marvile Martin, Karen Kraus, Bruce Bennett, Danny Trotter, Laura Jenkins

EXCUSED: Denise Svetly

STAFF PRESENT: Katharine Hildebrand, Clete Hansen, Grace Schwingel, Wayne Austin, Judy Mender

GUESTS: Glen Bille, Department of Revenue Representative,
Representatives of Schools and other persons

CALL TO ORDER

The meeting was called to order at 9:40 a.m. by Barbara Flaherty, Chair.

AGENDA

MOTION: Leon Lauer moved, seconded by Marvile Martin, to approve the agenda as published. Motion carried unanimously.

MINUTES (6/4/01)

MOTION: Leon Lauer moved, seconded by Marvile Martin, to approve the minutes of June 4, 2001 as written. Motion carried unanimously.

ADMINISTRATIVE REPORT

Board Rosters and Committees

The members of the Continuing Education Committee are: Karen Krause, Chair of the Committee, Bruce Bennett, Marvile Martin, Barb Flaherty, and Lorraine Norem. The Continuing Education Committee will be included in this report in the future. The Board requested that the lists of all the sub-committees continue to be part of the agenda packet. Barb Flaherty noted that the Scope of Practice Advisory Committee for Aestheticians, Electrologists and Manicurists is no longer an active committee.

Laura Jenkins informed the Board of her new FAX number, 608-776-2725
Karen Kraus also has a new FAX number, 414-297-7733.

2001 Meeting Dates

The next Board meeting is on 10/8/01 and the last Board meeting for the year will be on 12/3/01.

Revised Travel Reimbursement Guidelines

Noted.

To-Do List

The Board would like to continue receiving the To-Do List, indicating the names of the people who will be responsible for specific assignments or tasks.

Regulatory Digest

A member of the Continuing Education Committee will submit an article for the next Regulatory Digest. Katharine Hildebrand will write an article after having a discussion with Glen Bille of the Department of Revenue.

Summary of Reports on Pending Court Cases, Disciplinary Cases and Administrative Rules

Hildebrand noted that, at the suggestion of the Department's Legal Counsel, a complete list of the Department's pending court cases, disciplinary cases, and administrative rules will be included in each Board's agenda packet.

Press Releases and List of Disciplinary Orders

The Department has also decided to include press releases and the list of disciplinary orders in all Board agenda packets. This information is also on the Department's website.

To Pass Folder

Noted.

PRACTICE ISSUES

Question and Answer Dialogue re: Tax Issues and Business Relationships with the Department of Revenue

Glen Bille, from the Dept. of Revenue answered questions from the Board. Bille deals mostly with sales tax and withholding taxes.

Question: If a salon owner rents a chair to someone, but that person does not have an establishment license, and the salon owner still has some authority over them, can that individual technically be considered self-employed.

Bille: It's a matter of how much control the salon owner has over the individual. Things the IRS will look at are what is referred to as behavioral control: such as hours, when & where they work, who provides supplies needed to perform the services, direction of customers to the individual or does the individual obtain his or her own customers. How is the individual reimbursed for unrelated business expenses? Does the individual have an investment in the equipment that is used? Is he or she paid a commission or a salary? The kinds of things that the IRS looks at to determine if the worker is an individual contractor or an employee are: who controls when, where and how the individual works, etc. If an individual doesn't hold a manager's license, he or she is not considered an independent, self-employed person. The IRS has a form available that asks a series of questions about financial control and working relationships to determine whether an individual can be considered to be self-employed or an employee. This form can be filled out either by the firm or the individual worker.

Question: Can an individual hire or lease a manager's license? Leasing of a chair would be a good service of the manager of a salon to offer. It's important to get a clear cut definition of the liability if tax money is not turned in to the IRS because Barber/Cosmetology rules suggest to the people in the industry that you can rent a chair, be under a manager and still be self-employed; however, it appears this is not the case. Does an individual need an establishment license and a manager's license to consider himself or herself to be self-employed?

In the State of Wisconsin an individual can employ a manager. The manager is then legally liable to follow Barbering & Cosmetology rules. Judy Mender explained that the law requires that each barbering or cosmetology establishment employ a full-time manager. An individual who leases a chair in an establishment can employ someone and pay that person to be his or her manager. It was suggested that the Department needs to establish some specific criteria to indicate what is required for a person to be considered self-employed and put this into the Department's application packets. If a person is going to rent a chair, he or she needs both a manager's and an establishment license. However, bathroom and sanitary equipment supplies can be shared. (Note: This discussion does not apply to manicure, electrology, or aesthetics establishments. This only applies to barbering or cosmetology establishments)

Bille: Stated that he would need specific scenarios to provide the Board with a specific answer. The Board further discussed different aspects of this issue and the implications involved in classifying someone either as an independent, self-employed person or considering someone as an employee for tax purposes.

If an individual really wants to be independent, he or she would need to hold a Manager's license and an Establishment license because the Department can't control what the IRS is going to require. A person should not be able to apply for and be issued an Establishment license unless he or she holds a Manager's license also. In order to be really independent, a person needs to have the ability to make independent decisions when situations arise. The Board will prepare specific questions regarding specific scenarios to submit to the IRS so that by the next Board meeting in October the Board will be able to get specific answers to these questions. As the Department's rules stand right now, a practitioner cannot be considered self-employed.

Judy Mender will prepare a summary of the licensure requirements regarding this issue. The Board will then put all of this information in the Regulatory Digest.

Joan Kornitz will give Katharine the name of a woman at the IRS who trains cosmetologists as to what is legal and what is not legal within the IRS rules (Sue Borchard).

LEGISLATION

No action has been taken with Barbering & Cosmetology legislation. Hildebrand will give Board members the names of a list of key legislators to contact regarding the Board's legislative issues, such as the status of the shampoo bill.

ADMINISTRATIVE RULES

Amended Rules re: Process of Disinfection

Pam Haack has made changes to the proposed rule on disinfection the Board has submitted. The other two rules the Board has submitted will be ready by the October meeting.

Status of Other Proposed Rule Changes

Wayne Austin, Legal Counsel gave the Board an update on the status of other proposed rule changes. Austin reported on rules pertaining to delegated medical procedures, the use and disposal of lancets, massage as a cosmetic rather than a therapeutic modality, the definition of the term “cutting” as it is used in 454.01 of the statutes.

MOTION: Leon Lauer moved, seconded by Marvile Martin, to approve the administrative rule changes suggested by the Department’s Legal Counsel, Wayne Austin, in his June 8, 2001 memo to the Board regarding BC 2.025, BC 2.01 (8), BC 4.09 (3m), BC 1.01 (11m), BC 1.01 (3m). Motion carried unanimously.

Possible Rule Change re: Salons that Require Apprentices to Pay a Booth Rental Fee

The Board postponed making a decision on the issue of apprentices paying booth rental fees until the Board receives more information from the IRS as there is still some confusion regarding the apprentices being required to pay a booth rental fee. According to the apprenticeship contract, apprentices cannot rent a booth.

Hildebrand and Mender will follow up with Ken Moore, Supervisor in the Bureau of Apprenticeship Standards at the Department of Workforce Development (DWD) concerning DWD's rules about apprentices renting a booth, and see if he would be available to attend one of the Board’s meetings.

The Board is looking at a rule for assessing forfeitures. Austin is concerned that if a licensee doesn’t contest the assessment, and just pays the required fee, the Board never is involved in the decision. The Board would only become involved if the licensee requested a hearing. Steve Gloe and Wayne Austin suggest that if some kind of a ratification process by the Board were added to this rule, it would resolve the concerns that Legal Counsel has with the rule as it now stands. The Board agreed to Legal Counsel’s suggestion. Wayne Austin, will make changes to the rule for assessing forfeitures and bring the revised rule back to the Board at its next meeting.

BOARD MEMBER ACTIVITY

Nomination of Board Member to Attend NIC Fall Conference

Barb Flaherty noted that the NIC Fall Conference is scheduled for October 9-10, 2001 in Oklahoma City.

MOTION: Leon Lauer moved, seconded by Lorraine Norem, to nominate Barb Flaherty to attend the NIC Fall Conference. Motion carried unanimously.

Request for Input on Issues to Address at Conference

Barb Flaherty requested that board members give her questions to present at the NIC Fall Conference as she will be representing the Board. Katharine Hildebrand will FAX a copy of the Conference Agenda to the Board members. The Conference agenda is very pertinent to the issues facing this Board.

APPRENTICESHIP PROGRAM

High School Apprentice Programs

Karen Kraus discussed what's happening in Milwaukee with the Apprentice Program. There is an alternative high school that has a barbering and cosmetology program for juniors and seniors. It used to be called Learning Enterprises but has since been renamed. This should be a continuing item on the Board's agenda. Karen Krause will prepare a summary to present to the Board at a future Board meeting to keep the Board informed on the high school apprentice programs.

Review of the Need for an Establishment License as It Affects the Apprenticeship Program

Nothing

EXAMINATION ISSUES

Written Examination Development Update

Darwin Tichenor reviewed a new text that came out on the market last year, The Salon Fundamentals by Pivot Point International. The Exam Office conducted a preliminary review of the text to see how well it supports the examination. The results of the preliminary review showed that there are some areas of concern about this text covering the breadth of the exam questions, primarily of the written exam. As a result, the Exam Office, held an intensive two-day evaluation of every question that was not fully supported or that gave the Exam Office some concern. The two-day evaluation was held in Milwaukee with managers and instructors in April 2001. Barb Flaherty and Leon Lauer attended this evaluation. Tichenor handed out a memo from the Exam Office containing the results of this evaluation.

Three new forms of the written examination are completely supported by both Milady's Standard Textbook of Cosmetology and Salon Fundamentals. These forms will be used in the first exam in September 2001. If a school wishes to use either text, they will be exposing their students to materials that will give them the information they need for the examination. However, in this 100-question exam, there are 5 questions that are not covered by either Milady's Standard Textbook of Cosmetology or in Salon Fundamentals, but that are covered by the Milady's Barbering text.

Tichenor noted that the Exam Office completed a survey of Wisconsin licensed managers regarding their duties and responsibilities. There is a core group of managers who will meet to evaluate the results of that study on Monday, Sept. 17, 2001.

DIVISION OF ENFORCEMENT

Nothing

LEGAL COUNSEL REVIEW

Nothing

MISCELLANEOUS CORRESPONDENCE/INFORMATION

Compilation of Board Actions Taken from 10/00 to 6/01

Laura Jenkins noted that on page 34 of the agenda, the Motion regarding the waiver for owners having difficulty replacing managers should have been changed from a 45-day waiver to a 90-

day waiver (not 60 days as noted in the agenda packet). However, when this was adopted in the rules, it was correctly printed as being a 90-day waiver.

Milwaukee Area Technical College Externship Program: Karen Krause

Karen Kraus reported on the Externship program, a 192-hour course at MATC. The Board expressed their appreciation for the thoroughness and high quality work done by Karen Krause in preparing the report which covered all the requirements that NACAS has for an externship program.

It was suggested that an article could be put in the Digest, just to make salon owners aware of what is happening with the externship program and to let salon owners know that, in the future, they will be able to contact schools for externs to work in their salons. An article could list what a salon needs to do to meet the Board's requirements and NACAS' requirements. Bruce Bennett will provide some questions for Barbara Flaherty that pertain to the externship program that she will take with her to the NIC Fall Conference.

Information Bulletin on Bio-Hazardous Waste Disposal

Katharine Hildebrand passed around some information on bio-hazardous waste disposal, for informational purposes, that could be used to prepare an article for the Digest.

Response to Report: M. Fortuitum on Pedicure Soak, 5/16/01

None

NEW BUSINESS

None

Presentation of Proposed Stipulations by Prosecutors

The Board questioned why the stipulations were being discussed in Open Session. It was explained that it was a new procedure, suggested by Legal Counsel, that some boards are using to allow more input from the public and to answer any questions that may arise. This procedure is not required and can be discontinued if a Board doesn't like it.

MOTION: Karen Kraus moved, seconded by Lorraine Norem, to move the presentation of proposed stipulations back into closed session. Motion carried unanimously.

CONVENE TO CLOSED SESSION

MOTION: Leon Lauer moved, seconded by Marvile Martin, to convene in closed session to deliberate on cases involving hearings (s. 19.85 (11)(a), Stats.); to consider licensure or discipline (s. 19.85(1)(b), Stats.); to consider individual histories or disciplinary data (s. 19.85(1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.) Motion carried by a roll call vote: Barbara Flaherty-yes, Leon Lauer-yes, Lorraine Norem-yes, Marvile Martin-yes, Karen Kraus-yes, Bruce Bennett-yes, Danny Trotter-yes, Laura Jenkins-yes.

Open Session recessed at 11:25 a.m.

CLOSED SESSION

The Board deliberated on case closings, stipulations, and disciplinary actions.

RECONVENE TO OPEN SESSION

MOTION: Leon Lauer moved, seconded by Danny Trotter, to reconvene in Open Session at 11:40 a.m. Motion carried unanimously.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MOTION: Leon Lauer moved, seconded by Danny Trotter, that we accept findings of fact, conclusions of law, and order in the matter involving the following stipulations and case closings as discussed in closed session. Motion carried unanimously.

Stipulations:

Jody Skrzypchak; dba Parkside Styles (Stratford) - \$100 forfeiture.

Pamela A. Ehrike; dba Parkside Styles (Stratford) - \$100 forfeiture.

Robin E. McMillan; dba Head Waves Studio (Green Bay) - \$100 each offense - sanitation, keeping records.

Aaron Cunningham (Milwaukee) - will give him a limited extension of time to complete necessary paperwork to activate his apprenticeship permit, with terms.

Case Closings:

99 BAC 078 - no violation
99 BAC 082 - insufficient evidence
00 BAC 006 - no violation
00 BAC 065 - P3
00 BAC 066 - P2
00 BAC 083 - no violation
00 BAC 087 - insufficient evidence
00 BAC 089 - no violation and P2
00 BAC 095 - no violation
01 BAC 015 - insufficient evidence
01 BAC 018 - insufficient evidence
01 BAC 027 - insufficient evidence
01 BAC 034 - no violation

ADJOURNMENT

MOTION: Leon Lauer moved, seconded by Danny Trotter, to adjourn the meeting at 11:45 a.m. Motion carried unanimously.